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Attorneys for Plaintiff Jimmy Ellison

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION

In Re: AutoZone, Inc., Wage and
Hour Employment Practices
Litigation

Case No.: 3:10-md-02159-CRB

Hon. Charles R. Breyer

**PLAINTIFF'S NOTICE OF
ACCEPTANCE OF RULE 68
OFFER OF JUDGMENT**

**TO THE COURT, ALL PARTIES AND TO THEIR COUNSEL OF
RECORD:**

Pursuant to Federal Rule of Civil Procedure 68(a), Plaintiff Jimmy Ellison hereby accepts Defendant AutoZone, Inc.'s Rule 68 Offer to Compromise dated November 6, 2017, a true and correct of which is attached hereto as Exhibit A, according to the terms specified therein.

Dated: November 13, 2017

Respectfully submitted,

Capstone Law APC

By: s/ Matthew Theriault

Matthew T. Theriault

Lead Counsel for Plaintiff Jimmy
Ellison

EXHIBIT A

1 MICHAEL E. BREWER, Bar No. 177912
2 GREGORY G. ISKANDER, Bar No. 200215
3 JEFFREY J. MANN, Bar No. 253440
4 LITTLER MENDELSON, P.C.
5 Treat Towers
6 1255 Treat Boulevard, Suite 600
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11 jmann@littler.com

12 Attorneys for Defendant
13 AUTOZONE, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA—SAN FRANCISCO DIVISION

16 JIMMY ELLISON,

17 Plaintiff,

18 vs.

19 AUTOZONE, INC., a Nevada
20 Corporation, and DOES 1-25,
21 inclusive,

22 Defendants.

Case No.: 3:10-md-02159-CRB

**DEFENDANT AUTOZONE, INC.'S
RULE 68 OFFER TO
COMPROMISE**

Trial Date: December 11, 2017

**TO PLAINTIFF JIMMY ELLISON AND HIS ATTORNEYS OF
RECORD:**

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, Defendant AutoZone, Inc. ("Defendant") hereby offers to accept entry of judgment in favor of Plaintiff Jimmy Ellison ("Plaintiff") on all claims brought against it in his individual capacity in the total amount of Five Thousand Dollars (\$5,000.00), inclusive of all attorneys' fees and costs incurred on behalf of Plaintiff as to his individual claims to date in this action. Plaintiff shall not be entitled to recover any costs or fees, including attorneys' fees, as to his individual claims, in addition to this amount.

This offer is made by Defendant in full settlement of all of Plaintiff's individual claims arising out of, alleged in, or related to, the facts and transactions alleged in the operative complaint filed by Plaintiff in this lawsuit. This offer does not settle any of the claims Plaintiff has brought as a putative class representative on behalf of the proposed classes, his continuing interest in representing the proposed classes in connection with his anticipated appeal of the orders denying class certification and order decertifying the class, his continuing interest in recovering an incentive award for acting as class representative should any of the class claims be resolved, or his continuing interest in recovering class attorneys' fees and costs should any of the class claims be resolved.

This offer of judgment is made in good faith and solely for the purposes specified in Rule 68 of the Federal Rule of Civil Procedure and nothing in this Offer of Judgment shall be construed as an admission of liability and/or damages (including attorneys' fees) owed to Plaintiff.

If Plaintiff wishes to accept this offer, Plaintiff must serve written notice of acceptance upon Defendant, by and through its counsel, within fourteen (14) days after service of this offer of judgment.

If Plaintiff does not accept this offer, and fails to obtain a more favorable

1 judgment against Defendant, please take notice that pursuant to Rule 68(d) of the
2 Federal Rule of Civil Procedure, Defendant will ask the Court to deny Plaintiff
3 any post-offer costs, including attorneys' fees, and for an award of Defendant's
4 post-offer costs, including but not limited to, its attorneys' fees and costs, in
5 addition to any other rights and remedies available under the law.

6 Dated: November 6, 2017

LITTLER MENDELSON, P.C.

7
8 By: 

MICHAEL E. BREWER
GREGORY G. ISKANDER
JEFFREY J. MANN
Attorneys for Defendant
AUTOZONE, INC.

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11 Firmwide:150995965.1 013306.2161

In Re AutoZone, Inc., Wage and Hour Employment Practices Litigation
 U.S. District Court, Northern District of CA, Lead Case No. 3:10-md-02159-CRB

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Treat Towers, 1255 Treat Boulevard, Suite 600, Walnut Creek, California 94597. On November 6, 2017, I served the within document(s):

**DEFENDANT AUTOZONE, INC.'S RULE 68 OFFER TO
COMPROMISE**

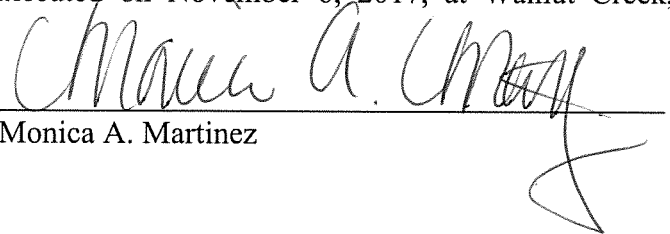
- ☐ by facsimile transmission at or about _____ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 925.946.9809. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Walnut Creek, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ by personally delivering a copy of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is _____@littler.com.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it

1 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
2 deposited in an overnight delivery service pick-up box or office on the same day with postage or
3 fees thereon fully prepaid in the ordinary course of business.

4 I declare that I am employed in the office of a member of the bar of this court at
5 whose direction the service was made. Executed on November 6, 2017, at Walnut Creek,
6 California.

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Monica A. Martinez

SERVICE LIST

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Attorneys for Plaintiff Jimmy Ellison

Firmwide:151078499.1 013306.2161

PROOF OF SERVICE

UNITED STATES DISTRICT COURT)
)
NORTHERN DISTRICT OF CALIFORNIA—)

SAN FRANCISCO DIVISION

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My email address is Dana.Joudi@capstonelawyers.com.

On **November 13, 2017** I served the document(s) described as:
PLAINTIFF'S NOTICE OF ACCEPTANCE OF RULE 68 OFFER OF JUDGMENT on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

MICHAEL E. BREWER, Bar No. 177912
GREGORY G. ISKANDER, BarNo. 200215
JEFFREY J. MANN, Bar No. 253440
LITTLER MENDELSON, P.C.
Treat Towers
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Telephone: 925.932.2468
mbrewer@littler.com
giskander@littler.com
jmann@littler.com

Attorneys for Defendant AutoZone, Inc.

(X) BY U.S. MAIL (ENCLOSED IN A SEALED ENVELOPE): I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

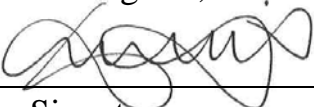
() BY FAX TRANSMISSION: At or before 5:00 pm, I caused said document(s) to be transmitted by facsimile. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and

the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

- () **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.
- () **BY CM/ECF SYSTEM:** I caused the above-referenced document(s) to be sent by electronic transmittal to the Clerk's Office using the CM/ECF System for filing which generated a Notice of Electronic Filing to the CM/ECF registrants in the case.
- () **BY FEDEX STANDARD OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.
- () **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.
- (X) **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **November 13, 2017**, at Los Angeles, California.

Dana Joudi
Type or Print Name


Signature